

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Date of Decision: 19.07.2019
CWP No.12236 of 2017**

(1)

Jagir Singh and others

.....Petitioners

Versus

Financial Commissioner (Appeals), Punjab and others

.....Respondents

(2)

CWP No.12252 of 2017

Joginder Pal and another

.....Petitioners

Versus

Financial Commissioner (Appeals), Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Ms. Alka Sarin, Advocate for the petitioners.

Ms. Anu Pal, DAG, Punjab.

Mr. M.L. Saini, Advocate for respondent No.4.

ARUN KUMAR TYAGI, J.

1. The petitioners in both these writ petitions-**CWP No.12236 of 2017 titled Jagir Singh and others Vs. Financial Commissioner (Appeals), Punjab and others** and **CWP No.12252 of 2017 titled Joginder Pal and another Vs. Financial Commissioner (Appeals), Punjab and others** have sought issuance of a writ in the nature of certiorari for quashing impugned order dated 31.03.1995 passed by respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala whereby petitioners were ordered to be evicted from land measuring

147 kanals 7 marlas comprised in khewat No.105, khatauni No.160, 163 and 165 khasra No.6//15 (8-0), 16 (8-0), 17/1 (7-4), 18/1 (4-0), 23 (8-0), 8//3 (8-0), 12//18 (0-6), 19 (8-0), 20/3 (0-9), 21 (8-0), 22 (8-0), 33//7/2 (6-13), 8 (8-0), 9 (8-0), 11 (8-0), 12 (8-0), 13 (8-0), 20 (8-0), 21 (3-4), 34//15/2 (4-16), 25//4/1 (0-13) and 6//14/2 (7-12) situated within the revenue estate of village Bahalolpur, Tehsil and District Kapurthala; order dated 20.05.1996 passed by respondent No.2-Commissioner, Jalandhar Division, Jalandhar whereby appeal filed against order dated 31.03.1995 was dismissed and order dated 31.08.2016 passed by respondent No.1-Financial Commissioner (Appeals), Punjab whereby revision filed against order dated 20.05.1996 was dismissed.

2. The writ petitions have been filed on the averments that on 10.06.1963 Daulat Ram father of petitioners Jagir Singh, Swaran Singh and Avtar Singh in CWP No.12236 of 2017 was given on lease land measuring 76 kanals 19 marlas and Rulia Ram father of petitioners Joginder Pal and Mohinder Pal in CWP No.12252 of 2017 was given on lease land measuring 63 kanals 8 marlas out of the abovesaid land (hereinafter referred to as 'the land in dispute') vide lease deeds dated 10.06.1963 executed in their favour by respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala under the provisions of the East Punjab Utilization of Lands Act, 1949 (for short "the 1949 Act"). The petitioners have been ordered to be dispossessed from the land in dispute under the impugned orders mentioned above which are illegal and liable to be quashed on the grounds set out in the petition.

3. In the writ petitions, the petitioners have referred to litigation between the parties under the Punjab Village Common Lands (Regulation) Act, 1961 (for short “the 1961 Act”), the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short “the 1948 Act”) and litigation between the parties pending in the Civil Court besides the litigation under the 1949 Act referred to above which may for the sake of brevity be summarized as under:-

Litigation under the 1961 Act:

(i) Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed ejectment applications against the predecessors of the petitioners under Section 7 of the 1961 Act for their ejectment which was dismissed by the Collector, Kapurthala vide order dated 28.04.1987 and appeal against the said order was dismissed vide order dated 10.11.1989 and the review petition was dismissed vide order dated 13.09.1992 by the Commissioner, Jalandhar Division, Jalandhar. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed CWP No.16903 of 1992 and CWP No.382 of 1993 and which were allowed by this Court vide order dated 22.07.2015 whereby impugned orders dated 28.04.1987, 10.11.1989 and 13.09.1992 were set aside and the matter was remanded to DDO-cum-Collector, Kapurthala for fresh adjudication. The review petition filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala seeking review of order dated 22.07.2015 was dismissed by this Court vide order dated 29.04.2016.

(ii) The predecessors in interest of the petitioners filed title suit under Section 11 of the 1961 Act which was decreed by the Collector, Kapurthala vide judgment and decree dated 26.02.1988. Appeal filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala against order dated 26.02.1988 was allowed by the Commissioner, Jalandhar Division, Jalandhar vide order dated 29.03.1996. The predecessors in interest of the petitioners filed CWP No.7469 of 1996 against the abovesaid order which was dismissed by this Court vide order dated 17.09.1999.

Litigation under the 1948 Act:

In 1995 the predecessors in interest of the petitioners filed petition for correction of the revenue record for depicting the shares of the Central Government and the proprietors (Malkaans). The Additional Director Consolidation, Punjab accepted the petition and called upon the Consolidation Officer, Kapurthala to scrutinize the record and make correct entries. CWP No.15627 of 1996 filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala against order dated 02.11.1995 was dismissed by this Court vide order dated 22.05.1997. The Consolidation Officer, Kapurthala passed order dated 01.10.1997 against the predecessors in interest of the petitioners which was challenged by them before the Settlement Officer, who vide order dated 30.01.1998 set aside order dated 01.10.1997 and remanded the matter to the Consolidation Officer, Kapurthala. The Consolidation Officer, Kapurthala vide order dated 31.05.1999 accepted the petition and corrected the record showing ownership of respondent No.4-Gram Panchayat, Village

Behlolpur, Tehsil and District Kapurthala, the Central Government and the proprietors (Malkaans). On appeal filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, order dated 31.05.1999 was set aside by the Settlement Officer vide order dated 16.08.2000 and the matter was again remanded to the Consolidation Officer, Kapurthala. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed a petition before the Director Land Records, Punjab under Section 42 of the 1948 Act challenging order dated 16.08.2000 which was dismissed vide order dated 02.09.2004. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed CWP No.16595 of 2004 against orders dated 16.08.2000 and 02.09.2004 which was disposed of by this Court on 04.05.2006. Vide order dated 23.11.2007 the Consolidation Officer, Kapurthala dismissed the petition of the petitioners. Appeal of the petitioners was accepted by the Additional Director Consolidation, Punjab vide order dated 04.02.2010 and the matter was remanded to the Consolidation Officer, Kapurthala. The Consolidation Officer, Kapurthala accepted the petition vide order dated 30.07.2010 and corrected the record to show ownership of respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, the Central Government and the proprietors (Malkaans). Appeal filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala was accepted by the Director Land Records, Punjab vide order dated 25.09.2013 and orders dated 04.02.2010 and 30.07.2010 were set aside and order dated 23.11.2007 passed by the Consolidation Officer, Kapurthala dismissing

the petition of the petitioners was restored. The petitioners filed CWP No.24627 of 2013 challenging order dated 25.09.2013 passed by the Director Land Records, Punjab which was upheld by this Court while observing that “it shall be open to the petitioners to seek appropriate remedy as available to them in accordance with law. However, it is clarified that the observations recorded by the Director while deciding petition under Section 42 of the Act are only for the purpose of deciding the petition and will not be taken into consideration in any other proceedings which may be pending or initiated by the parties”.

Litigation before the Civil Court:

The petitioners filed civil suit against respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala and others for declaration to the effect that land in dispute “is the ownership of the Central Govt. and the plaintiffs are lessees and allottees of the abovesaid land under Central Govt. since 1963 on the basis of lease dated 10th June, 1963 and are in cultivating possession of the land and the defendant No.4-Gram Panchayat has got no link or concern with the abovesaid land” while challenging order dated 25.09.2013 passed by the Director Land Records, Punjab in the proceedings under the 1948 Act with consequential relief of permanent injunction “restraining the defendant No.4-Gram Panchayat from interfering into the peaceful possession of the plaintiffs over the land mentioned above illegally and forcibly as defendant No.4 has no concern with the land mentioned above”. In the abovesaid civil suit defendants No.1 to 3 filed written statement admitting that the land in dispute is owned by the Central Government but the petitioners were in unauthorized possession. The

trial Court dismissed the application but the Lower Appellate Court vide order dated 13.03.2015 restrained respondents temporarily from dispossessing the appellants/applicants/plaintiffs forcibly, illegally except otherwise in due course of law during the pendency of the suit. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed Civil Revision No.4646 of 2015 against the abovesaid order which was dismissed by this Court vide order dated 21.03.2016.

Litigation under 1949 Act:

On 14.03.1995, respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, after dismissal of its ejectment application by the Collector, Kapurthala vide order dated 28.04.1987 and appeal by the Commissioner, Jalandhar Division, Jalandhar on 10.11.1989 and pendency of its CWP No.16903 of 1992 in this Court, filed ejectment application under Sections 6 and 7 of the 1949 Act which was allowed vide order dated 31.03.1995 passed by respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala whereby petitioners were ordered to be evicted from the land in dispute. Appeal filed by the petitioners was dismissed by respondent No.2-Commissioner, Jalandhar Division, Jalandhar vide order dated 20.05.1996. The petitioners filed revision before respondent No.1-Financial Commissioner (Appeals), Punjab which was dismissed vide order dated 20.05.1996.

4. The petitioners have challenged the legality of the impugned orders on the grounds that respondent No.1-Financial Commissioner (Appeals), Punjab dismissed the revision on the ground

of 531 days delay but there is no limitation for filing of revision petition. Further the delay in filing the revision petition has been explained by stating that the earlier lawyer had failed to file the revision petition and kept the petitioners in the dark. Respondent No.1-Financial Commissioner (Appeals), Punjab had relied upon non-existent order dated 29.05.2013 of the Director, Land Records, Punjab as in their case the order of the Director, Land Records, Punjab was dated 25.09.2013. This Court had, while upholding order dated 25.09.2013 passed by the Director, Land Records, Punjab, clarified that the observations recorded by the Director, Land Records, Punjab while deciding petition under Section 42 of the Act are only for the purpose of deciding the petition and will not be taken into consideration in any other proceedings which may be pending or initiated by the parties. The impugned orders are vague and non-speaking and were passed without giving opportunity to lead evidence. A single joint application seeking eviction of several lessees was not maintainable. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala having filed ejectment application under Section 7 of the 1961 Act could not indulge in forum shopping by filing application under the 1949 Act. Since ejectment application under the 1961 Act is pending on remand before DDPO-cum-Collector, Kapurthala for adjudication, respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala could not continue the ejectment application under 1949 Act. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala is not authorized to file any ejectment application under the 1949 Act. Respondent No.3-

Deputy Commissioner-cum-Collector, Kapurthala had not till date determined the lease of the petitioners and no eviction order could be passed against them. In the written statement filed by the State of Punjab, the Collector-cum-Chief Sales Commissioner and the Tehsildar (Sales)-cum-M.O., it was admitted that the land in dispute was owned by the Central Government. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala had no right, title and interest in the land in dispute and could not seek ejectment of the petitioners under the 1949 Act. As per clause 16 of the lease deed any dispute between the Collector and the lessee was required to be referred to the arbitration of the Commissioner, Jalandhar Division, Jalandhar. While claiming the impugned orders to be illegal the petitioners have prayed for quashing of the same.

5. In compliance with order dated 19.02.2017 passed by this Court, affidavit of respondent No.5-Sh. Manbir Singh Dhillon, Tehsildar (Sales)-cum-Managing Officer, Kapurthala was filed on behalf of respondents No.1 to 3 and 5. Reply by way of affidavit of Mohd. Tayyab, Deputy Commissioner-cum-Collector on behalf of respondents No.1 to 3 and 5 was also filed. In the said affidavits it has been submitted that the Consolidation Officer, Jalandhar declared the disputed land to be land of Central Government vide order dated 31.05.1999 and in compliance of the said order AC 2nd Grade sanctioned Mutation No.614 in favour of the Central Government. Ownership of such lands, which are evacuee properties was vested in the State of Punjab Department of Revenue and Rehabilitation in the year 1961 as clarified vide Government letter dated 18.03.1992. At

present there is no policy or instructions issued by the Government to allot these lands to unauthorized occupants. The land in dispute was leased out to father of the petitioners by the Deputy Commissioner, Kapurthala on 10.06.1963. The lease period has also lapsed. In compliance with order dated 31.05.2017 passed by this Court the petitioners were asked vide letter dated 05.09.2017 to deposit Rs.10,50,000/- as rent and security mesne profits for illegal occupancy of 34 years but the petitioners have not deposited the same.

6. No reply has been filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala.

7. We have heard learned Counsel for the parties and have gone through the record.

8. Learned Counsel for the petitioners has argued in the first instance that respondent No.1-the Financial Commissioner (Appeals), Punjab dismissed the revision on the ground of 531 days delay despite the fact that there is no limitation prescribed for filing of revision petition. In any case the delay in filing of the revision petition had been satisfactorily explained by stating that the earlier lawyer had failed to file the revision petition and kept the petitioners in the dark and there was sufficient ground for condonation of delay in filing of the revision. Further, respondent No.1 had relied upon non-existent order dated 29.05.2013 of Director, Land Records, Punjab as in their case the order of the Director, Land Records, Punjab was dated 25.09.2013. Moreover, this Court had while upholding order dated 25.09.2013 passed by the Director, Land Records, Punjab clarified that the observations recorded by the Director, Land Records, Punjab while

deciding petition under Section 42 of the Act are only for the purpose of deciding the petition and will not be taken into consideration in any other proceedings which may be pending or initiated by the parties.

9. Learned Counsel for the petitioners has next argued that the impugned orders are vague and non-speaking and were passed without giving opportunity to lead evidence. A single joint application seeking eviction of several lessees was not maintainable. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala had no locus to file the application under the 1949 Act. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala after having filed application under Section 7 of the 1961 Act could not indulge in forum shopping by filing application under the 1949 Act. Since ejectment application under the 1961 Act is pending on remand before DDPO-cum-Collector for adjudication, respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala could not continue the ejectment application under 1949 Act. Respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala had not till date determined the lease of the petitioners and no eviction order could be passed against them. In the written statement filed by the State of Punjab, the Collector-cum-Chief Sales Commissioner and the Tehsildar (Sales)-cum-M.O., it was admitted that the land in dispute was owned by Central Government. Respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala had no right, title and interest in the land in dispute and could not seek ejectment of the petitioners under the 1949 Act. As per clause 16 of the lease deed any dispute between the Collector and

the lessee was required to be referred to the arbitration of the Commissioner, Jalandhar Division, Jalandhar. The impugned orders are patently illegal and the same may be quashed.

10. On the other hand learned State Counsel has argued that the Consolidation Officer, Jalandhar declared the disputed land to be land of Central Government vide order dated 31.05.1999. In compliance of the said order AC 2nd Grade sanctioned Mutation No.614 in favour of the Central Government. Ownership of such lands, which are evacuee properties were vested in State of Punjab Department of Revenue and Rehabilitation in the year 1961 as clarified vide Government letter dated 18.03.1992. The land in dispute was leased out to father of the petitioners by Deputy Commissioner, Kapurthala on 10.06.1983. The lease period has also lapsed. At present there is no policy or instructions issued by the Government to allot these lands to unauthorized occupants. In compliance with order dated 31.05.2017 passed by this Court the petitioners were asked vide letter dated 05.09.2017 to deposit Rs.10,50,000/- as rent and security mesne profits for illegal occupancy of 34 years but the petitioners have not deposited the same.

11. Learned Counsel for respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala has argued that the land in dispute being shamlat deh vested in respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala. The predecessors in interest of the petitioners were leased out the land in dispute, possession of which was taken by the Collector, Kapurthala under Section 3 of the 1949 Act, for the period of 20 years under

Section 5 thereof. On determination of the lease by efflux of time the predecessors in interest of the petitioners/petitioner were bound to peaceably handover vacant possession of the land in dispute to respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala but they failed to do so and continued to be in unauthorized possession thereof. The petitioners were ordered to be rightly ejected from the land in dispute and the impugned orders do not suffer from any illegality. Therefore, the writ petitions may be dismissed.

12. The vital questions which arise for determination in the present case are as to whether the land in dispute leased out to the predecessors in interest of the petitioners was shamlat deh which vested in respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala or the predecessors in interest of the petitioners were gair marusi tenants over the land in dispute which belonged to the Central Government and proprietors of the village and whether impugned orders evicting the petitioners from the land in dispute at the instance of respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala are illegal and the petitioners are entitled to continue in possession thereof.

13. For determination of these questions it will be apposite to refer to the relevant statutory provisions.

14. Section 3 of the 1949 Act which empowers the Collector of the District to take possession of any vacant land reads as under:-

“3. Power to take possession of any vacant land -

- (1) Notwithstanding any law to the contrary, the Collector may issue notice to the owner of any land which has not been cultivated for the last six or more harvests to show cause, within thirty days of the date of the service of such notice on him, why the land has not been cultivated and in case the Collector does not find the explanation to be satisfactory he may take possession of the land forthwith for the purposes of this Act :

Provided that the Collector may take possession of the land without issue of notice, if, in his opinion, the owner thereof has been wrongfully shown in the revenue records to have cultivated the land which in fact has remained uncultivated for six or more harvests prior to such wrong entry.

- (2) The notice required by sub-section (1) shall be deemed to be duly served if delivered at, or sent by post to the usual or last known place of residence of the owner :

Provided that no notice shall be deemed to be invalid on the ground of any defect, vagueness or insufficiency.”

15. Section 5 of the 1949 Act confers power on the Collector of the District to lease out such land to any person for the purpose of growing of food and fodder crops and the same makes statutory prescription as under:-

“5. Lease by Collector -

Where the Collector has taken possession of any land under Section 3, he may, lease it to any person on such terms and conditions as he may deem fit for the purpose of growing food and fodder crops :

Provided that the period of lease shall not be less than 7 years or more than 30 years.”

16. Section 6 of the 1949 Act empowers the Collector to determine the lease in case of breach of any of the terms and conditions thereof while Section 7 of the 1949 Act obligates him to

deliver possession to the person specified on termination of lease and the same are also reproduced as under:-

“6. Power of Collector to determine lease in certain cases—

- (1) If a person to whom land has been leased under Section 5 commits a breach of any of the terms and conditions thereof, the Collector shall without prejudice to any other right or remedy against him, have the power to determine the lease and take possession of the land.
- (2) Where lease has been determined by the Collector the lessee shall not be entitled to any compensation.

7. Delivery of possession on termination of lease -

- (1) Where any land taken possession of by the Collector under Section 3 is on the expiry of the lease to be returned to the owner, the Collector may after making such inquiry, if any, as he considers necessary, specify by order in writing the person to whom possession of the land shall be given.
- (2) The delivery of possession of land to the person specified in any order made under sub-section (1) shall be a full discharge of the Collector from all liability in respect of such delivery but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.
- (3) Where the person to whom possession of any land is to be given cannot be found and has no agent or other person empowered to accept delivery on his behalf, the Collector shall cause a notice declaring that the land is released to be affixed on some conspicuous part of the land. (4) On issue of the notice referred to in sub-section (3) the land specified in the notice shall be deemed to have been delivered to the person entitled to the possession thereof, and the Government or the Collector shall not be liable for any compensation or other claim in respect of the land for any period after the said date.”

17. From a bare reading of sections 6 and 7 of the 1949 Act, it is clear that Section 6 of the 1949 Act deals with those types of cases

where the lease is determined by the Collector before the expiry of the period of lease, while Section 7 of the 1949 Act envisages those cases where proceedings are initiated by the Collector on the expiry of the term of the lease. Section 7 of the 1949 Act, as is clear from its plain reading, provides a method to deliver possession to the owners of that property of which they were deprived under Section 3 of the 1949 Act. After the expiry of the term of the lease, no right is left in the lessee who obtains the same under section 5 of the 1949 Act. The question of proceedings against the lessee in the ordinary Court of law hardly arises. After the expiry of the period of lease, on the asking of the Collector, the lessee is legally bound to return possession of the leased land. In order to achieve the object of the Act, the legislature in its wisdom provided this summary method of ejectment. Sub-section (1) of section 7 of the 1949 Act only says that if the land of which possession has been taken by the Collector under sub-section (3) has to be returned to the owner on the expiry of the lease, the Collector, after making such enquiry as he considers necessary, specify by order in writing the person to whom possession of the land has to be given. The enquiry, that is conducted by the Collector, is only to find out the person to whom possession of the land is to be given under section 7 of the 1949 Act. The Scheme of the 1949 Act is such that the ejectment has to take place automatically in the cases falling under section 7 of the 1949 Act and the lessee has no right to object to his ejectment and is left with no option but to vacate the land. When proceedings under section 7 of the 1949 Act start, the only objection available to the lessee is that the lease period has not come to an end.

**(See Karnal Co. Farmers Society Ltd. Vs. State of Haryana : 1972
PLJ (Punjab and Haryana High Court) 172.)**

18. In the present case possession of the land in dispute was taken by the Collector, Kapurthala under Section 3 of the 1949 Act and land measuring 76 kanals 19 marlas was given on lease to Daulat Ram father of petitioners Jagir Singh, Swaran Singh and Avtar Singh in CWP No.12236 of 2017 and land measuring 63 kanals 8 marlas was given on lease to Rulia Ram father of petitioners Joginder Pal and Mohinder Pal in CWP No.12252 of 2017 on 10.06.1963 vide lease deeds dated 10.06.1963 executed in their favour by respondent No.3- Deputy Commissioner-cum-Collector, Kapurthala in exercise of powers conferred vide Section 5 of the 1949 Act for the period of 20 years. In the lease deeds dated 10.06.1963, it was mentioned that the abovesaid land was shamlat deh and that possession thereof was taken by the Collector under Section 3(1) of the 1949 Act and that the Collector was competent by virtue of Section 5 of the 1949 Act to lease out the abovesaid land. As per the above mentioned lease deeds the above mentioned parcels of land were leased out by the Collector to Daulat Ram and Rulia Ram predecessors in interest of the petitioners for the term of 20 years at the yearly rent of Rs.3/- only per acre. Although the above mentioned lease deeds contained the provision for extension of lease up to 20 years but in view of the proviso to Section 5 of the 1949 Act, which mandated that the period of lease shall not be less than 7 years or more than 20 years, and the fact that lease in favour of the predecessors in interest of the petitioners was also for the period of 20 years, no extension could be granted to Daulat Ram and

Rulia Ram or their successors in interest on expiry of the period of lease. Term and condition No.12 of the lease deeds also provided that the lessee shall on the determination of the lease by efflux of time or otherwise peaceably vacate and give up possession of the land.

19. Since, Daulat Ram and Rulia Ram admittedly came into possession of the land in dispute under lease deeds dated 10.06.1963 executed in their favour by the Collector, Kapurthala, in which the land in dispute was described to be shamlat deh possession of which had been taken under Section 3 of the 1949 Act from respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, Daulat Ram and Rulia Ram and their successors in interest were statutorily estopped by Section 116 of the Indian Evidence Act, 1872 from challenging the title of owner respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala . Even otherwise, in jamabandi for the year 1992-93 the land in dispute was recorded to be shamlat deh owned by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala. The predecessors in interest of the petitioners/petitioner filed petition under Section 42 of the 1948 Act for recording ownership of Central Government and proprietors and possession of the predecessors in interest of the petitioners/petitioners as gair marusi tenant under Central Government and proprietors. After the migration of Muslim proprietors to Pakistan their interest in shamlat deh became evacuee property which was also taken over by the State Government but the same being indivisible part of shamlat deh was not disposable and the Central Government, Custodian or the State Government had no jurisdiction to create

tenancy rights in any person in respect of such land which under the 1961 Act vested in the Gram Panchayat and could not be partitioned even qua rights (See **Gram Panchayat of Village Jamalpur Vs. Malwinder Singh : 1985 PLJ 463** and **Surjit Kaur and Another Vs. State of Punjab and others : 2006 (2) LAR (Punjab and Haryana High Court) 373** and **Joginder Singh through L.Rs Vs. State of Punjab and others : 2008 (1) LAR (Punjab and Haryana High Court) 444**). Daulat Ram and Rulia Ram, being lessees in possession of the land in dispute under Section 5 of the 1949 Act, could not legitimately file petition under Section 42 of the 1948 Act and the Director Land Records, Punjab and the Consolidation Officer, Kapurthala had no jurisdiction to adjudicate upon the question of title under the 1948 Act (See **Parkash Singh Vs. Joint Development Commissioner, Punjab : 214 (2) RCR (Civil) (PHHC) 721**). The Consolidation Officer, Jalandhar had declared the land in dispute as Central Government property vide order dated 31.05.1999 passed on petition of Daulat Ram and Rulia Ram filed under the 1948 Act and Mutation No.614 was sanctioned by Assistant Collector 2nd Grade in favour of Central Government on the basis thereof. In the written statement filed in civil suit tiled Joginder Pal and others Vs. State of Punjab and others and in the reply filed in the present writ petitions, respondents No.1 to 3 and 5 claimed the land in dispute to be owned by the Central Government transferred to Punjab Government. However, the petition filed by Daulat Ram and Rulia Ram stood dismissed with restoration of the order dated 23.11.2007 of the Consolidation Officer by the Director, Land Records, Punjab vide order

dated 25.09.2013 which was upheld by this Court vide order dated 03.02.2014. Since order dated 31.05.1999 passed by the Consolidation Officer, Jalandhar stood set aside, mutation No.614 sanctioned on the basis thereof also stood thereby annulled resulting in restoration of the earlier entries in the revenue record. Any ignorance or inaction on the part of respondents No.1 to 3 and 5 cannot in any manner vindicate or substantiate the claim of the petitioners as to their possession being under the Central Government. Presumption of truth attaching to the entries in jamabandi for the year 1992-93 as to the land in dispute being shamlat deh vesting in respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala and as to the predecessors in interest of the petitioners/petitioners being in unauthorized possession thereof after expiry of lease in their favour stood unrebutted.

20. Since, the Collector, Kapurthala had taken possession of the land in dispute under Section 3 of the 1949 Act from the respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, on determination of the lease the Collector, Kapurthala was bound to order under Section 7 of the 1949 Act that the land in dispute be returned to the respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala. Such order ought to have been passed by the Collector, Kapurthala on 10.06.1983 but no proceedings were initiated and no such order was passed by the Collector, Kapurthala till respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed ejectment application under Section 7 of the 1961 Act on 17.04.1985

and under Sections 6 and 7 of the 1949 Act on 16.02.1995. Since, the Collector, Kapurthala culpably failed to discharge his statutory obligation to return the land in dispute to the owner respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala, it had the requisite locus standi and was justified in filing the application under the 1949 Act and the application was not liable to be dismissed as being not maintainable on the ground of want of locus standi or absence of any statutory provision enabling filing of the same particularly so when no prejudice was thereby caused to the petitioners who were legally bound to vacate the land in dispute. In view of the provisions of Section 7 of the 1949 Act and the nature of the relief sought, filing of the separate applications against the predecessors in interest of the petitioners in possession of the land in dispute under separate lease deeds was not required and the joint application filed was not liable to be rejected even on the ground of mis-joinder of causes of action.

21. It is pertinent to observe here that in the present case the lease in favour of Daulat Ram and Rulia Ram was determined by efflux of time. Therefore, the question of determination of the lease in their favour by the Collector under Section 6 of the 1949 Act on the ground of breach of the terms and conditions of the lease deed did not arise and the impugned orders are not annulled by absence of any such determination.

22. It may also be observed here that respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala filed application under Section 7 of the 1949 Act on 17.04.1985. Daulat

Ram and Rulia Ram predecessors in interest of the petitioners objected to the maintainability of the ejectment application under Section 7 of the 1961 Act on the ground of applicability of the provisions of the 1949 Act which was dismissed by the Collector vide order dated 28.04.1987 on the ground that respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala ought to have filed the application under the provisions of the 1949 Act and appeal against the said order was dismissed vide order dated 10.11.1989 and the review petition was dismissed vide order dated 13.09.1992 by the Commissioner. In view of the said orders respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala accordingly filed applications under Sections 6 and 7 of the 1949 Act on 16.02.1995. Since the predecessors in interest of the petitioners were leased out the land in dispute under Section 5 of the 1949 Act, on termination of lease by efflux of time they could be dispossessed from the land in dispute under Section 7 of the 1949 Act and due to their possession not being wholly unauthorized Section 7 of the 1961 Act was not applicable which was also the stand of the petitioners in the proceedings under Section 7 of the 1961 Act. Since, the lease in favour of the predecessors in interest of the petitioners/petitioner could not be extended, the application for their ejectment was rightly allowed by respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala vide order dated 31.03.1995 which order was rightly upheld by respondent No.2-the Commissioner, Jalandhar Division, Jalandhar vide order dated 20.05.1996 and by respondent No.1-Financial Commissioner (Appeals), Punjab vide order

dated 31.08.2016. The explanation given by the petitioners for long delay of 531 days in filing of the revision that their earlier Counsel did not file revision and kept them in the dark was not supported by any complaint against their earlier Counsel. The petitioners failed to prove sufficient cause for delay of 531 days in filing of the revision and dismissal of the revision by respondent No.1 Financial Commissioner (Appeals), Punjab as being time barred cannot be said to be improper. Typographical mistake committed by respondent No.1 Financial Commissioner (Appeals), Punjab in mentioning in his order dated 20.05.2016 date of the order of the Director Land Records (Punjab) as 29.05.2013 instead of correct date 25.09.2013 does not annul the same in any manner. CWP No.16903 of 1992, filed by respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala challenging orders dated 28.04.1987, 10.11.1989 and 13.09.1992 was allowed by this Court vide order dated 22.07.2015 on concession given by the petitioners. The petitioners appear to have deliberately conceded to setting aside of the abovesaid orders to challenge the validity of ejectment order passed under the provisions of the 1949 Act on the ground of pendency of ejectment application under Section 7 of the 1961 Act. The petitioners cannot be allowed to approbate and reprobate. In the facts and circumstances of the case respondent No.4-Gram Panchayat, Village Behlolpur, Tehsil and District Kapurthala cannot be said to have resorted to forum shopping as claimed by the petitioners and the application under Sections 6 and 7 of the 1949 Act was not barred and the impugned orders cannot be

said to be illegal due to availability of alternative remedy and pendency of ejectment application under Section 7 of the 1961 Act.

23. The petitioners having no legal right to continue in possession of the land in dispute on determination of the lease in their favour by efflux of time have adopted every possible dilatory tactics and resorted to frivolous litigation to protect their unauthorized possession and avoid their dispossession from the land in dispute. The petitioners, being legally and contractually bound to peaceably vacate the land in dispute and give vacant possession to the Collector, continued to be in unauthorized possession of the land in dispute in utter breach of the legal and contractual obligation. The petitioners have been rightly ordered to be evicted from the land in dispute by respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala vide order dated 31.03.1995 upheld by respondent No.2-Commissioner Jalandhar, Division Jalandhar vide order dated 20.05.1996 and respondent No.1-Financial Commissioner (Appeals) Punjab vide order dated 31.08.2016 and the impugned orders do not suffer from any illegality and are not liable to be quashed. In his order dated 31.08.2016 Financial Commissioner (Appeals) Punjab has mentioned that possession has been taken from the petitioners on 26.11.2013. In any case, the petitioners have no legal right to continue in possession of the land in dispute and if not so already dispossessed, the petitioners will be liable to be dispossessed from the land in dispute in execution of the eviction orders. Respondents No.1, 2, 3 and 5 have mentioned in their written statement that in compliance with order dated 31.05.2017 passed by this Court the petitioners were

asked vide letter dated 05.09.2017 to deposit Rs.10,50,000/- as rent and security mesne profits for illegal occupancy of 34 years but the petitioners have not deposited the same. Respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala will be entitled to recover the same in accordance with law.

24. Accordingly, the writ petitions being devoid of any merit are dismissed with no order as to costs. The respondent No.3-Deputy Commissioner-cum-Collector, Kapurthala is directed to initiate proceedings against the petitioners for recovery of the amount of Rs.10,50,000/- as mesne profits for illegal occupancy of the land in dispute in accordance with law.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

19.07.2019

Kothiwal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No